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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,701	03/16/2004	Donald R. Close	08049.0935.00000	1776
22852	7590	01/11/2006	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			GREENHUT, CHARLES N	
		ART UNIT	PAPER NUMBER	
			3652	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/800,701	CLOSE ET AL.
	Examiner	Art Unit
	Charles N. Greenhut	3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-44 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 16 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**I. Drawings**

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sweeping device must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

**II. Double Patenting**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the

examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1-3, 6, 15, 21-22, 27, and 42-44 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5-7, and 9 of U.S. Patent No. US 6,604,337 B2 (CLOSE et al.) Although the conflicting claims are not identical, they are not patentably distinct from each other because the “lid” of the ‘337 patent and the “sleeve” of the present application are obvious variations.

### **III. Claim Rejections - 35 USC § 112**

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 1-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - 1.1. At multiple locations, claim 1 and subsequent claims recite limitations such as “the (cut) strap,” “the sleeve,” and “the tray.” These terms lack antecedent basis because

they are merely recited as the object of functional language, e.g., "for," "configured to", and are never positively included within the claim.

1.1(a) For example, compare, "a tray-transport configured to transport a tray" with, "a tray-transport, wherein said tray-transport transports a tray."

#### **IV. Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 1, 9-10, 17-20, 23-35 and 37 is/are rejected under 35 U.S.C. 102(b) as being anticipated by TANTTU (US 5,059,082 A).

1.1. With respect to claim 1, TANTTU discloses a tray transport (201), strap cutter (7)/(8), strap removal portion (e.g., 200), an unsleaving station (219)/(200).

1.2. With respect to claim 9, TANTTU additionally discloses a traffic control device (201)/(202).

1.3. With respect to claim 10, TANTTU additionally discloses a sleeve transport conveyor (226).

1.4. With respect to claim 17, TANTTU additionally discloses a mail catcher (210)/(224).

1.5. With respect to claim 18, TANTTU additionally discloses a centering guide (212)/(216).

1.6. With respect to claim 19, TANTTU additionally discloses a vacuum takeaway (222)/(228).

- 1.7. With respect to claim 20, TANTTU additionally discloses a transfer device (225).
- 1.8. With respect to claim 23, TANTTU additionally discloses the strap cutter configured to cut the strap above the tray and the strap removal portion configured to remove the strap below the tray.
- 1.9. With respect to claim 24, TANTTU additionally discloses the strap removal portion configured to remove the strap near the center.
- 1.10. With respect to claim 25, TANTTU additionally discloses a strap chopping portion (7)/(8).
- 1.11. With respect to claim 26-28, TANTTU additionally discloses a sleeve expander comprising a gripper comprising vacuum cups (222)/(228).
- 1.12. With respect to claim 29, TANTTU additionally discloses a push ram (202).
- 1.13. With respect to claim 30, TANTTU additionally discloses a sleeve sorting station (219)/(200).
- 1.14. With respect to claim 31, TANTTU additionally discloses a sleeve transport conveyor (218).
- 1.15. With respect to claim 32, TANTTU additionally discloses at least one container (221).
- 1.16. With respect to claim 33, TANTTU additionally discloses a sleeve ejector (222)/(228).
- 1.17. With respect to claim 34, TANTTU additionally discloses a pusher paddle (222)/(228).
- 1.18. With respect to claim 35, TANTTU additionally discloses a floor fixture (220).

1.19. With respect to claim 37, TANTTU additionally discloses a sweeping device (202).

2. Claim(s) 42 is/are rejected under 35 U.S.C. 102(b) as being anticipated by ASHIKAWA (US 6,098,373 A).

2.1. With respect to claim 42, ASHIKAWA teaches a strap cutter blade (61), spatula (50A/B) and take away (151).

3. Claim(s) 43-44 is/are rejected under 35 U.S.C. 102(b) as being anticipated by applicants acknowledged prior art.

3.1. With respect to claim 43-44, applicant admits on page 2 of the specification the existence of an apparatus comprising a tray-transport, sensors, destraping station, unsleaving station, conveyor and a sorting/stacking station and the corresponding method of use. While applicants disclosure admits this task was performed with the aid of a human operator, there are no limitations recited in the claim which distinguish over the apparatus and method described in the specification.

#### **V. Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 2-3, 4, 6, and 11 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over TANTTU (US 5,059,082 A) in view of VAN NEWKIRK (US 5481854 A).

1.1. With respect to claim 2, TANTTU fails to teach a tray sizing station. VAN NEWKIRK teaches a tray sizing station (C). It would have been obvious to one of

ordinary skill in the art to modify TANTTU with the sizing station of VAN NEWKIRK in order to determine the size of the tray.

1.2. With respect to claim 3 and 6, it would have been obvious to one of ordinary skill in the art to determine the height and/or length of the tray as part of determining the size of the tray.

1.3. With respect to claim 4, TANTTU fails to teach a photo-reflective zone sensor. VAN NEWKIRK teaches a photocell sensor (23). It would have been obvious to one of ordinary skill in the art to modify TANTTU with the sensor of VAN NEWKIRK in order to determine the size of the tray.

1.4. With respect to claim 11, TANTTU fails to teach a safety enclosure. VAN NEWKIRK teaches a safety enclosure (60). It would have been obvious to one of ordinary skill in the art to modify TANTTU with the safety enclosure of VAN NEWKIRK in order to promote workplace safety.

2. Claim(s) 4-5, and 7-8 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over TANTTU in view of VAN NEWKIRK and YARBROUGH (US 6,688,084 B2)

2.1. With respect to claims 4, 5, 7 and 8, YARBROUGH (Col. 4, Li. 39) teaches photocells and microswitches are sensing devices, interchangeable and well known in the art. It would have been obvious to one of ordinary skill in the art to modify TANTTU in view of VAN NEWKIRK with a photocell or microswitch of YARBROUGH in order to determine the size of the tray.

3. Claim(s) 12-14 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over TANTTU in view of TERJUNG (US 5,379,570 A).

3.1. With respect to claims 12 and 13, TANTTU fails to teach a control system comprising a computer. TERJUNG teaches a control system comprising a computer (Col. 7 Li. 5). It would have been obvious to one of ordinary skill in the art to modify TANTTU with the computer controller of TERJUNG in order to coordinate the system.

3.2. With respect to claim 14, TANTTU fails to teach an emergency stop switch. TERJUNG teaches an emergency stop switch (46). It would have been obvious to one of ordinary skill in the art to modify TANTTU with the emergency stop switch of TERJUNG in order to promote workplace safety.

4. Claim(s) 15-16 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over TANTTU in view of LECROY (US 6,311,822 B1).

4.1. With respect to claims 15 and 16, TANTTU fails to teach a powered zero-accumulation conveyor. LECROY teaches a powered zero-accumulation conveyor (18). It would have been obvious to one of ordinary skill in the art to modify TANTTU with the powered zero accumulation conveyor of LECROY in order to prevent collision.

5. Claim(s) 21, and 38-40 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over TANTTU in view of ASHIKAWA (US 6,098,373 A).

5.1. With respect to claim 21, TANTTU fails to teach a rotating saw blade and flexible spatula. ASHIKAWA teaches a rotating saw blade (61) and flexible spatula (50A/B). It would have been obvious to one of ordinary skill in the art to modify TANTTU

with the saw and spatula of ASHIKAWA in order to facilitate cutting while protecting the package contents.

5.2. With respect to claim 38, TANTTU additionally discloses removing a sleeve from a tray. TANTTU fails to teach cutting and removing a strap. ASHIKAWA teaches cutting and removing a strap. It would have been obvious to one of ordinary skill in the art to modify TANTTU to cut and remove a strap in order to allow separation of the sleeve and tray.

5.3. With respect to claim 39, TANTTU fails to teach a control system. ASHIKAWA teaches a control system (150). It would have been obvious to one of ordinary skill in the art to modify TANTTU with the control system of ASHIKAWA in order to coordinate the system.

5.4. With respect to claim 40, TANTTU additionally discloses sorting the empty sleeve.

6. Claim(s) 22 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over TANTTU in view of ASHIKAWA and GRAHN (US 3,889,442 A).

6.1. With respect to claim 22, TANTTU fails to teach a hooked blade and spatula. ASHIKAWA teaches a spatula (50A/B). It would have been obvious to one of ordinary skill in the art to modify TANTTU with the spatula of ASHIKAWA in order to separate the element to be cut from the load. GRAHN teaches a hook shaped blade (20)/(21). It would have been obvious to one of ordinary skill in the art to modify TANTTU with the hook shaped blade of GRAHN in order to securely engage the knife with the element to be cut.

7. Claim(s) 36 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over TANTTU in view of ROSS (US 5,695,071 A).

7.1. With respect to claim 36, TANTTU fails to teach a basket-full sensor. ROSS teaches a basket full sensor (30). It would have been obvious to one of ordinary skill in the art to modify TANTTU with the basket full sensor of ROSS in order to avoid overflow of the basket.

8. Claim(s) 41 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over TANTTU in view of ASHIKAWA and further in view of PALMLEAF (US 3,186,278 A).

8.1. With respect to claim 41, TANTTU fails to teach chopping the cut strap. PALMLEAF teaches chopping the cut strap. It would have been obvious to one of ordinary skill in the art to modify TANTTU to chop the cut strap as taught by PALMLEAF in order to facilitate disposal and/or recycling of the strap.

## **VI. Conclusion**

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
3. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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